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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 AFSHIN BAHRAMPOUR,

6 Petitioner,

7 v.

8 SHERIFF JOE LOMBARDO,

9 Respondent.

Case No. 2:19-cv-01524-GMN-VCF

**ORDER**

10 This habeas matter is before the Court on consideration of Petitioner Afshin Bahrampour's  
11 Application to Proceed *In Forma Pauperis* (ECF No. 1) as well as initial review under the Rules  
12 Governing Section 2254 Cases.<sup>1</sup> Bahrampour has submitted a *pro se* Petition for Writ of Habeas  
13 Corpus (ECF No. 1-1). For the reasons discussed below, the Court denies the application for *in*  
14 *forma pauperis* ("IFP") status and dismisses the petition without prejudice.

15 A \$5.00 filing fee is required to initiate a habeas action in a federal district court. The  
16 Court may authorize a prisoner to begin an action without prepaying the filing fee if the prisoner  
17 submits an IFP application on the approved form along with the appropriate supporting  
18 documentation. 28 U.S.C. § 1915(a); LSR 1-1, LSR 1-2. Although Bahrampour submitted the  
19 required form and supporting documents, the Court denies his IFP application based on the  
20 multiple substantial defects explained in this order and resulting dismissal of his petition.

21 Pursuant to Habeas Rule 4, the assigned judge must examine the habeas petition and order  
22 a response unless it "plainly appears" the petitioner is not entitled to relief. *See also Valdez v.*  
23 *Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir.  
24 1998). This rule allows courts to screen and dismiss petitions that are patently frivolous, vague,  
25 conclusory, palpably incredible, or false. *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).  
26 The court may also dismiss claims at screening for procedural defects. *See Boyd*, 147 F.3d at 1128.

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28 <sup>1</sup> All references to a "Habeas Rule" or the "Habeas Rules" in this order identify the Rules Governing Section 2254 Cases in the United States District Courts.

1           Bahrapour is charged in a grand jury indictment returned on July 29, 2019, in the Eighth  
2   Judicial District Court for Clark County, Nevada (“state court”). *State of Nevada v. Bahrapour*,  
3   Case No. C-19-342022-1.<sup>2</sup> The indictment alleges nine felony and misdemeanor charges,  
4   including: count one – act of terrorism or attempted act of terrorism; count two – third degree  
5   arson; count three – fourth degree arson; count four – burglary motivated by bias or hatred toward  
6   the victim; count five – first degree arson motivated by bias or hatred toward the victim; count six  
7   – damage to property used for religious purposes; and counts seven, eight, and nine – third degree  
8   arson motivated by bias or hatred toward the victim. (ECF No. 1-2 at 1–6.) Bahrapour is  
9   currently detained at the Clark County Detention Center. (ECF No. 1-1 at 1.)

10           The petition claims Bahrapour is bringing a pretrial challenge to the constitutionality of  
11   the charges alleged in the state court indictment pursuant to 28 U.S.C. § 2241. (*Id.* at 31.) The  
12   request for relief seeks dismissal of the grand jury indictment and a finding that selected criminal  
13   statutes are void for vagueness. (*Id.*) Bahrapour alleges eight grounds for relief: (1) NRS  
14   202.4415, which defines “act of terrorism,” is overbroad and void for vagueness; (2) count one of  
15   the indictment, alleging acts of terrorism or attempted acts of terrorism, violates the laws of the  
16   United States because it contains the disjunctive “or” in 26 separate instances in one paragraph,  
17   which does not sufficiently provide a defendant notice to prepare a defense; (3) the arson charges  
18   alleged in counts two and three of the indictment are not sufficient to establish a criminal act  
19   because available video evidence shows a suspect burning his own property, rather than the  
20   property of another person; (4) count four of the indictment is not supported by probable cause or  
21   “slight or marginal evidence” to show that felonious intent, but results from “mere speculation”;  
22   (5) count five of the indictment is not justified because no part of the building ignited; (6)(a) NRS  
23   193.021, which defines “personal property,” is void for vagueness, and (6)(b) NRS 41.690, which  
24   defines crimes “motivated by hatred or bias,” violates Bahrapour’s free speech rights protected  
25   by the First Amendment; (8) the use of “acoustic psycho-correction via bone conduction” and

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27           <sup>2</sup> This Court takes judicial notice of the proceedings in Bahrapour’s criminal case in the Eighth Judicial  
28   District Court of the State of Nevada. The register of actions shows that trial is set for January 13, 2020.  
The docket records of the Eighth Judicial District Court may be accessed by the public online at:  
<https://www.clarkcountycourts.us/Anonymous/default.aspx>.

1 other testing of “electronic products” on Bahrampour without his consent violates his liberty  
2 interests in bodily integrity under the Due Process Clause of the Fourteenth Amendment and due  
3 process rights under the Fifth Amendment; (8) 18 U.S.C. § 2331, which provides the federal  
4 definitions for “international terrorism,” is impermissible vague and overbroad. (*Id.* at 8–32.)

5 Here, the petition is subject to multiple substantial defects. First, the petition improperly  
6 seeks federal judicial intervention in a pending state criminal proceeding. The *Younger* abstention  
7 doctrine prevents federal courts from enjoining pending state court criminal proceedings, even if  
8 there is an allegation of a constitutional violation, unless there is an extraordinary circumstance  
9 that creates a threat of irreparable injury. *Younger v. Harris*, 401 U.S. 37, 53–54 (1971). The  
10 Supreme Court has instructed that “federal-court abstention is *required*” when there is “a parallel,  
11 pending state criminal proceeding.” *Sprint Commc’ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013)  
12 (emphasis added). Irreparable injury does not exist if the threat to a petitioner’s federally protected  
13 rights may be eliminated through his or her defense of the criminal case. *Younger*, 401 U.S. at 46.

14 Second, Petitioner has not alleged or demonstrated that he fully exhausted his state court  
15 remedies. A criminal defendant seeking federal habeas relief to restrain ongoing state criminal  
16 proceedings must fully exhaust his state court remedies before presenting his constitutional claims  
17 to the federal courts. *E.g.*, *Arevalo v. Hennessy*, 882 F.3d 763, 764–67 (9th Cir. 2018) (finding  
18 that California petitioner properly exhausted his state remedies by filing two motions in the trial  
19 court, a habeas petition in the court of appeal, and a habeas petition in the state supreme court,  
20 each of which was denied). The exhaustion requirement ensures that state courts, as a matter of  
21 federal-state comity, will have the first opportunity to review and correct alleged violations of  
22 federal constitutional guarantees. *Coleman v. Thompson*, 501 U.S. 722, 731 (1991). As a general  
23 rule, a federal court will not entertain a petition seeking intervention in an ongoing state criminal  
24 proceeding absent extraordinary circumstances, even when a petitioner’s claims were otherwise  
25 fully exhausted in the state courts. *E.g.*, *Sherwood v. Tomkins*, 716 F.2d 632, 634 (9th Cir. 1983);  
26 *Carden v. Montana*, 626 F.2d 82, 83–85 (9th Cir. 1980).

27 No extraordinary circumstances are presented here. Bahrampour’s petition challenges the  
28 constitutionality of the charges alleged in the indictment. (*Id.* at 31.) The prosecution is ongoing.

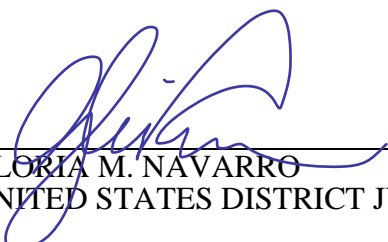
1 To the extent that he faces possible limitations on his free speech rights from a conviction, his  
2 situation is not different in substance from any criminal defendant facing potential loss of  
3 constitutional rights in a pending criminal prosecution—including the most fundamental right, to  
4 liberty. Defendants in state criminal cases routinely allege that state charges violate their  
5 constitutional rights, which makes this a regular occurrence, not an extraordinary circumstance.  
6 Bahrapour's pretrial motion practice or defenses at trial may eliminate any threat to his federally  
7 protected rights. Additionally, the state court docket indicates that a petition for writ of habeas  
8 corpus is currently pending before the trial judge. It is clear that Bahrapour has not exhausted  
9 his state court remedies. For these reasons, abstention and dismissal are required.

10 Given the multiple substantial defects presented, this matter will be dismissed without  
11 prejudice. Dismissal of this action without prejudice will not materially impact the analysis of any  
12 issue in a later filed habeas proceeding, or otherwise result in substantial prejudice.

13 **IT IS ORDERED:**

- 14 1. Petitioner Afshin Bahrapour's Application to Proceed *In Forma Pauperis* (ECF  
15 No. 1) is DENIED.
- 16 2. Bahrapour's petition (ECF No. 1-1) is DISMISSED without prejudice.
- 17 3. A certificate of appealability is DENIED, as jurists of reason would not find dismissal  
18 of the petition to be debatable or wrong.
- 19 4. The Clerk of Court shall CLOSE this case and ENTER final judgment accordingly,  
20 dismissing this action without prejudice.
- 21 5. Bahrapour may not file any further documents in this closed case, save and except  
22 for a motion seeking reconsideration of this order or relief from the judgment entered.  
23 Any further filings or requests for relief must be presented in a new case with a new  
24 case number.

25 DATED: September 9, 2019

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28 GLORIA M. NAVARRO  
UNITED STATES DISTRICT JUDGE